

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0449

Sales Tax

Calendar Years 1991, 1992, 1993, 1994, and 1995

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ISSUE(S)

I. **Gross Retail Tax** – Method of assessment used by auditor

Authority: IC 6-8.1-5-1; 45 IAC 2.2-4-2

Taxpayer protests the method of assessment used by the auditor.

STATEMENT OF FACTS

Taxpayers do business as a body shop and have one business location in Indiana. It is a sole proprietorship established twenty-six years ago. The taxpayer is engaged in the business of repairing motor vehicles and was not registered to collect Indiana sales tax on those sales.

The taxpayer assesses and collects Indiana sales tax but failed to remit the tax to the Department. Taxpayers state it included the sales tax on its individual income tax returns. A review of taxpayer's accounts indicates no sales tax was remitted. At hearing, the taxpayer was advised on how to keep books and records, how and when to file ST-103's, when to issue exemption certificates and when not, that taxpayer buy materials and parts exempt when he incorporates it in the selling price, and proper record keeping. Sample copies of prepared ST-103's, sales and use tax worksheets and journal entries were prepared and given the taxpayer at hearing. The hearing officer reviewed taxpayer's 1120 Federal Income Tax Return and found that the assessment as reported was proper. At hearing, taxpayer was also advised that the 1996 monthly ST103's were at warrant and should be paid or actual returns filed immediately.

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DISCUSSION

At issue is whether the taxpayer's sales as shown on departmental records are correct.

Taxpayer has not provided the department with proof that the sales shown on departmental records are incorrect. However, the hearing officer has reviewed and explained to the taxpayers, that the assessment was not out of context for the amount as reported on their 1120 returns. The auditor, in effect, had utilized the 1120 returns for gross sales and has deducted labor to arrive at taxable sales. Taxpayer receives no exemption certificates from the customers.

The department has not received evidence to establish that the assessment is in error.

FINDING

Taxpayer's protest is respectfully denied.